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No. 80-2160

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LORRAINE A. WILLIAMS and CHARLES E. WILLIAMS, on behalf of themselves and on behalf of the congregation of the MT. JEZREEL BAPTIST CHURCH, a District of Columbia corporation,

Petitioners,

v.

AULIN E. JOHNSON, BALIS A. DUNLAP, JR., GEORGE A. BROWN, JOHN A. DAVIS, ANDREW T. FLEMING, ROBERT HAIGLER, NELSON C. MALONE, YVONNE SMITH, ELDRIDGE SPEARMAN, WILLIAM SWANN and BERNARD A. WADE, individually and as trustees of the MT. JEZREEL BAPTIST CHURCH, and HAROLD E. TRAMMELL, pastor,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTION PRESENTED

Was there an abuse of judicial discretion where the trial court, *sua sponte* dismissed the petitioners' case upon a finding that the petitioners had made no showing of wrongdoing or that petitioners represented the alleged class upon repeated informal requests and an order of court to make such a showing?

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COUNTERSTATEMENT OF THE CASE

Petitioners, together with five others, by and through their attorney, filed the instant action on March 10, 1977 under the style of *William Belcher, et al.* v. *Aulin Johnson, et. al.*, Civil Action 2388-77. Petitioners and those with whom they were associated claimed to represent a class, the similarly situated members of Mt. Jezreel Baptist Church.

Petitioners claimed respondent trustees, aided by the respondent pastor breached their judiciary duties by converting church funds to their personal use, refusing to have the books professionally audited, refusing to make the Church's books of account available to the congregation for inspection, failing to comply with Internal Revenue Service Regulations and failing to account for the income of the Church.

After issue was joined and the case specially assigned for expeditious handling, the parties met for a status hearing on July 5, 1977. A discovery schedule was agreed upon and the matter continued until August 10, 1977.

When it appeared the petitioners' discovery had not been completed by August 10, 1977 a further deposition schedule was agreed to and the matter continued until October 27, 1977.

At the hearing on October 22, 1977, petitioners sought and were granted permission to file a motion for summary judgment within two weeks, with respondents' reply within 10 days from filing. The court assigned February 22, 1978 as the date for pre-trial with trial tentatively scheduled on March 1, 1978 and a permanent trial date of June 7, 1979.

At the pre-trial on February 22, 1978 it was evident the petitioners had delayed the filing of their motion for summary judgment and pre-trial statement until the last moment placing upon the respondents "an awesome burden". (Pet. App. 6a)

Petitioners were not prepared for trial and the March 1, 1978 trial date was not used. On March 7, 1978 the trial court, in an order, noted the delays caused by petitioners, and failure to set forth undisputed

material facts in their motion for summary judgment as required by the Court's Rules and denied their motion. The court also directed the petitioners, as a part of the record, to detail any the specific contention of wrong doing respecting each respondent. The court ordered the parties to complete discovery. (Pet. App. 2a-3a)

Respondents, their discovery completed, awaited action by the petitioners. None was forthcoming. On February 16, 1979 petitioners filed a "totally frivolous" motion requiring respondents to disclose tax returns and information related thereto, despite the fact that all such information had been made available by the Internal Revenue Service and respondents. (Pet. App. A)

On June 11, 1979, four days after the second trial date was passed by, the trial court, *sua sponte*, entered an order dismissing this matter and denying petitioner's motion to disclose tax returns stating "a little effort on plaintiffs' part would have brought a speedy adjudication of this action." (Pet. App. 6a)

On October 17, 1979 petitioners filed a motion to vacate the dismissed order, which motion was denied. (Pet. 8)

Petitioners thereupon appealed the decision, which judgment was affirmed by a panel of the District of Columbia Circuit of Appeals on February 11, 1981. A petition for rehearing was denied on March 24, 1981. (Pet. 8)

This writ then followed, with the petitioners herein only two of the original seven.

REASONS FOR DENIAL OF WRIT

1. *There was no denial of due process.* While the respondents did not move the Trial Court to dismiss this action, we support the Trial Court's actions. We, too,

had recognized the lack of substance to petitioners' case and were of the belief that at the time of trial petitioners' case would fail for lack of proof and we would be spared the appeals. We do recognize in our reading of the Trial Court's Dismissed Order, its frustration with petitioners who would not prepare their case (Pet. App. A). The petitioners' argument that they were entitled to notice and a hearing before the dismissal on June 11, 1979 ignores the fact that the court had given notice in the form of an order on March 7, 1979 and the lengthy discussion of the case during pre-trial on February 22, 1979.

It is clear the "fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Anderson National Bank* v. *Luckett*, 321 US 233 (1944). This very fundamental rule was cited by petitioners' main case upon this point, *California Diversified Promotions, Inc.* v. *Musik*, 505 F. 2d 278.

The petition seeks to persuade this Court that in all cases one must be afforded a hearing before any court takes action. This is not the case. If this is so then every applicant before this Court would be so entitled. Common sense tells us that there are times when courts may act *sua sponte*. This case is such a matter. Petitioners filed their complaint couched in general language on March 10, 1977. On February 22. 1978, with a subsequent order on March 7, 1978 petitioners were required to come forth with particulars giving substance to their claim. Instead they came forward with a request for additional discovery on January 16, 1979 (a year later). The record is clear. The judge had a right to act *sua sponte*. We submit the pleadings suggested by the peti-

tioners are adequate to safeguard their rights. The real question is not a violation of Constitutional rights but whether the trial court abused its discretion.

2. The trial court followed *Link* v. *Wabash Railroad* 370 US 626 (1961). Justice Harlen, speaking for the majority in *Link*, supra, was most explicit. A trial court has the right, acting on its own initiative, to clear its calendars of cases remaining dormant because of the conduct of the parties seeking relief. According to *Link*, supra, this is an "inherent power" required to manage the court's affairs.

The fact is apparent from the petition filed herein that petitioners filed a complaint on March 10, 1977, at a time they were not prepared to go forward. They refused to prepare their case nor could they state their cause of action when ordered by the Court on March 7, 1978. When they had failed to comply with the order of court over a year later, June 11, 1979, the cause was dismissed.

Even as of this date they have not made any submission evidencing compliance with the order. They are still maintaining that all they must show is an allegation. This Trial Court found insufficient.

3. *The Trial Court did not abuse its discretion.* Petitioners seemingly argue the failure of the Trial Court to grant a hearing prior to the *sua sponte* dismissal in an abuse of discretion, but does not set forth their arguments clearly. It is true that criteria are set forth, but it is not made clear how the petitioners are to avoid the consequences of their own lack of action nor, indeed, their lack of a case.

This entire matter is predicated upon petitioners' erroneous perception that their wishes to find evil among the defendants must necessarily be followed by a joint effort by the court and respondents to supply the proof. We should like to oblige, and did respond for from 1977 and 1978 by allowing the petitioners to spend two days reviewing all of our bank statements, checks and other financial material; by working with Internal Revenue and having even material in dead files available; and the taking of tedious depositions. Nothing indicating any misconduct on the part of any defendant was found, or this Court may be assured the petitioners would have made that fact known.

Petitioners maintain they act on behalf of the congregation. It is interesting to note that only two of the original seven plaintiffs bring this action. It is also to be noted that since 1977 petitioners did not make any effort to proceed with their class action other than a motion filed on March 11, 1978, four days after the court order demanding that the case be set forth. The motion was not correctly presented and was denied. Petitioners do not allege the court below was in error in denying the motion to certify.

There is nothing in this record to suggest the granting of this petition. There is not a significant federal question nor are there any rights needing protection. This is a matter of the petitioners refusing to perceive their theory of action cannot be proved.

CONCLUSION

In view of the foregoing reasons and the reasons set forth in the opinions below, respondents respectfully submit that the petition for review by certiorari be denied.

Respectfully submitted,

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Attorney for Respondents

June, 1981

CERTIFICATE OF SERVICE

I certify that four copies of the foregoing opposition to petition were served upon counsel of record for the petitioners, Charles E. Williams, Esq., 1329 Shepherd Street, N.W., Washington, D.C. 20011, Postage prepaid by first class mail on July 20, 1981.

BLAINE P. FRIEDLANDER
Attorney for Petitioners